#### UNITED STATES PATENT AND TRADEMARK OFFICE

# BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte JOSHUA POKEMPNER, JONATHAN WRIGHT, and KELLIE HERBERT

Application 10/733,828 Technology Center 3700

JUN 0 5 2007

U.S. PATENT AND TRADEMARK OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on March 26, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below.

# **EXAMINER'S ANSWER**

## **Evidence Relied Upon**

The Examiner has failed to list all prior art relied upon in the rejections currently on appeal under the heading "(8) Evidence Relied Upon" in the Examiner's Answer mailed December 18, 2006. Bauman (5,667,064) (Answer, pp. 2 and 8) is not listed among the reference evidence as required by the Manual of Patent Examining Procedure (MPEP) § 1207.02(A)(8).

### Status Of Amendments

Further review of the Examiner's Answer reveals that the Examiner has failed to provide a statement whether he agrees or disagrees with the status of amendments contained in the Appeal Brief (filed August 9, 2006). See MPEP § 1207.02(A)(4). Correction is required.

#### **CONCLUSION**

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- (1) to issue and mail a PTOL-90 that fully complies with MPEP §1207.02(A)(4) and § 1207.02(A)(8);
  - (2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS AND INTERFERENCES

PATRICK I NOI AN

Deputy Chief Appeals Administrator

(571) 272-9797

PJN/hh

GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY MI 48007-7021